

**RESOLUTION NO. 16-\_\_\_\_**

**Resolution Of The City Council Of The City Of Emeryville Appropriating \$1,802,269.68 From Fund 298 (Housing Assets Fund) In Order To Make Timely Debt Service Payments Due November 8, 2016, Pursuant To Promissory Notes Held By The Charles A. And Elizabeth C. Leone Living Trust And The Miriam N. Flynn Trust One UAD 10/5/2001, As Well As Payment To The State Franchise Tax Board, Which Notes Are Secured By Deeds Of Trust Encumbering 5890 And 5900 Christie Avenue, Emeryville, California**

**WHEREAS**, on March 15, 2011, the Emeryville Redevelopment Agency (“Agency”) adopted Resolution No. RD18-11 authorizing a Purchase and Sale Agreement (the “Contract”) with the Charles A. and Elizabeth C. Leone Living Trust and the Miriam N. Flynn Trust One UAD 10/5/2001 (collectively, “Sellers”) for the acquisition of 5890 and 5900 Christie Avenue, Emeryville, California (collectively, the “Property”); and

**WHEREAS**, in conjunction with the closing, the Agency and Sellers executed Amendment No. 1 to the Purchase and Sale Agreement (the “Amendment”) on November 7, 2011, to memorialize in one document for certainty and the convenience of the parties: (1) the gross purchase price of \$10,356,892 based on the results of the survey of the Property and the Easement Area (which was agreed to and accepted by the parties on March 17, 2011); (2) the demolition bid deduction of \$219,550 (which was agreed to and accepted by the parties on April 21, 2011); (3) the environmental remediation deduction of \$500,000 (which was agreed to and accepted by the parties on September 21, 2011); and (4) the final net purchase price of \$9,637,342 (“Purchase Price”); and

**WHEREAS**, on November 14, 2011, the transaction closed and at close of escrow the Agency made a payment of \$1,500,000 against the Purchase Price and executed two promissory notes in favor of the Charles A. and Elizabeth C. Leone Living Trust in the amount of \$4,227,300.26 (“Leone Note”) and the other in favor of the Miriam N. Flynn Trust One UAD 10/5/2001 in the amount of \$3,910,041.74 (“Flynn Note”), which obligations are secured by separate deeds of trust encumbering the property at 5890 and 5900 Christie Avenue; and

**WHEREAS**, with the dissolution of the Redevelopment Agency, the City as Successor Agency listed the obligations due under the Leone Note and Flynn Note as enforceable obligations, yet the Department of Finance maintained that the obligations due under the Leone Note and Flynn Note are not enforceable obligations and thus have been denied; and

**WHEREAS**, 5890 and 5900 Christie Avenue were initially acquired with low and moderate income housing funds and thus on April 10, 2012 these properties,

along with all of the other housing assets of the former Redevelopment Agency, were approved by the Emeryville Oversight Board for transfer to the City of Emeryville pursuant to Resolution No. OB 01-12 and neither the State Department of Finance, State Controller, nor the Alameda County Auditor-Controller have objected to the transfers of the housing assets to the City; and

**WHEREAS**, on August 1, 2012, pursuant to Health and Safety Code Section 34176 (a), the City submitted a housing assets transfer form to the Department of Finance, which form clearly showed 5890 and 5900 Christie Avenue as housing assets transferred to the City, and on August 31, 2012 the Department of Finance advised that it was “not objecting” to the items on the form; and

**WHEREAS**, the acquisition and subsequent transfer of 5890 and 5900 Christie Avenue to the City as a housing asset has been approved by the State Department of Finance, the State Controller and the Alameda County Auditor-Controller, but nevertheless the obligations under the Leone Note or Flynn Note have been denied; and

**WHEREAS**, notwithstanding the position of the Department of Finance, on November 8, 2016 payment is due under the Leone Note in the amount of \$936,268.27 and under the Flynn Note in the amount of \$866,001.41 for a total sum due of \$1,802,269.68, and because Flynn did not reinvest the proceeds of the sale into a replacement property, three and one third percent (3.33%) of the payment due under the Flynn Note must instead be paid to the Franchise Tax Board; thus of the \$866,001.41 due on the Flynn Note, \$837,134.70 will be paid to Miriam Flynn and \$28,866.71 to the State Franchise Tax Board; and

**WHEREAS**, the Housing Assets Fund (Fund 298) that has been set up for the City’s housing activities, as required by Section 34176 (d), which activities may include debt service of the 5890 and 5900 Christie Avenue properties, which are housing assets of the City; and

**WHEREAS**, funds are available in the Housing Assets Fund (Fund 298) to make debt service payments to the Leone Note, Flynn Note, and the State Franchise Tax Board; and

**WHEREAS**, in order to make the payments due it is recommended that the City Council approve an appropriation from the Housing Assets Fund (Fund 298) in order to make the required payments to the Leone Note, Flynn Note, and the State Franchise Tax Board and then payments made accordingly from the Housing Assets Fund (Fund 298); now, therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville does hereby find and determine as follows:

1. An appropriation of \$1,802,269.68 in the Housing Assets Fund (Fund 298) for the debt service payments noted below is hereby authorized; and the City Manager, City Attorney and Finance Director are hereby authorized and directed to take such other and further actions, and sign such other and further documents, as is necessary and proper in order to implement this Resolution on behalf of the City Council of the City of Emeryville.
2. The City Manager, City Attorney and Finance Director are hereby empowered to take all actions necessary to make payment due under the Leone Note in the amount of \$936,268.27 to the Charles A. and Elizabeth C. Leone Living Trust and under the Flynn Note in the amount of \$837,134.70 to the Miriam N. Flynn Trust One UAD 10/5/2001 and \$28,866.71 to the State Franchise Tax Board.
3. To the extent the Charles A. and Elizabeth C. Leone Living Trust or the Miriam N. Flynn Trust One UAD 10/5/2001 has assigned any or all payments due under the Leone Note or Flynn Note respectively, the City Manager, City Attorney and Finance Director are hereby authorized to direct such payments to such third parties as may be authorized in writing by the Trustees of the Charles A. and Elizabeth C. Leone Living Trust or the Miriam N. Flynn Trust One UAD 10/5/2001.
4. The City Council of the City of Emeryville hereby declares that every word, sentence, section, paragraph, clause or phrase of this Resolution is severable. If for any reason, any word, sentence, section, paragraph, clause or phrase of this Resolution is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining words, sentences, sections, paragraphs, clauses or phrases.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, October 18, 2016, by the following vote:

AYES:  \_\_\_\_\_  
NOES:  \_\_\_\_\_  
ABSTAIN:  \_\_\_\_\_  
ABSENT:  \_\_\_\_\_

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

**APPROVED AS TO FORM:**



\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**CITY ATTORNEY**